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No. 95-1726

In the Supreme Court of the United States

OCTOBER TERM, 1995

UNITED STATES OF AMERICA, PETITIONER

v.

GEORGE LABONTE,
ALFRED LAWRENCE HUNNEWELL, AND STEPHEN DYER

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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4 pp

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1. Respondents LaBonte and Hunnewell acknowledge (LaBonte Br. in Opp. 7; Hunnewell Br. in Opp. 3) that the courts of appeals are in conflict on the question presented in this case. Since the filing of our petition for a writ of certiorari, the Eighth Circuit (like the Seventh and Tenth Circuits before it) has held that Amendment 506 is inconsistent with the Sentencing Commission's obligation under 28 U.S.C. 994(h) to "assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of" career offenders, and is therefore invalid. See *United States v. Fountain*, Nos. 95-2264 & 95-2374, 1996 WL 210638 (May 1, 1996). Particularly in light of the First

Circuit's denial of rehearing en banc in these consolidated cases, see Pet. App. 109a-113a, the conflict in authority will not be eliminated absent review by this Court.

2. Respondents also contend (LaBonte Br. in Opp. 8-9; Hunnewell Br. in Opp. 4-5) that the circuit conflict does not warrant this Court's review because (a) the Career Offender Guideline applies only to a small percentage of federal offenders, and (b) invalidation of Amendment 506 would effect a relatively small incremental change in the sentences imposed under that Guideline. Those arguments lack merit.

a. Resolution of the question presented will affect a substantial number of cases, particularly in light of the Commission's decision to give Amendment 506 retroactive application. See Pet. App. 112a (Stahl, J., dissenting from denial of rehearing en banc); see also *id.* at 113a (Lynch, J., dissenting from denial of rehearing en banc) ("The issues raised by these cases as to the validity of Amendment 506 to the Sentencing Guidelines have enormous implications for the administration of criminal justice both in this Circuit and elsewhere."). Indeed, the fact that five courts of appeals have ruled on this issue since the Amendment's November 1, 1994, effective date belies any suggestion that the issue arises infrequently.

b. Precisely because the Career Offender Guideline applies only to the most serious federal offenders, proper application of that Guideline is of particular importance to the federal sentencing scheme. Congress expressly required that the Guidelines applicable to such offenders should "specify a sentence to a term of imprisonment at or near the maximum term authorized." 28 U.S.C. 994(h). Respondents' suggestion that incremental changes in the guideline

ranges applicable to such offenders are of little significance cannot be reconciled with that congressional mandate.

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For the foregoing reasons, and for the reasons stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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